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AUTO DEALERS LEAD THE WAY FOR IGNORING CERTAIN FEDERAL REGULATIONS

Not all federal regulations reflect a rule of law. In fact, some are not even given deference by the courts as a legitimate interpretation of the law. The U.S. Supreme Court recently concluded that certain federal regulations can and should be ignored. In *Encino Motorcars, LLC v. Navarro*, the Court unanimously rejected the procedurally defective regulations of the U.S. Department of Labor ("DOL") requiring service advisors of automobile dealerships be eligible for overtime pay under the Fair Labor Standards Act ("FLSA").

All auto dealership employees were once exempt from the federal minimum wage and overtime requirements. However, this changed in 1966 when the FLSA required dealerships to meet the minimum wage requirements, but exempted from overtime requirements salesmen, partsmen and mechanics primarily engaged in selling or servicing various vehicles.

In 1974, Congress stated that any salesman, partsman or mechanic primarily engaged in selling or servicing automobiles was exempt from the overtime requirement. Auto service advisors were not specifically addressed. Auto service advisors are employed by dealerships to meet with customers, listen to their concerns about their cars, suggest repair and maintenance services, sell new accessories or replacement parts, record service orders, follow-up with customers as services are performed, and explain repair and maintenance work when customers return for their vehicles.

Over the years, the DOL has held various contradictory opinions on the application of the FLSA overtime exemption to auto service advisors. In 1970, the DOL interpreted the statute to require overtime pay to service advisors. In a 1978 opinion letter the DOL, following court decisions, reversed its prior interpretation and stated that service advisors were exempt from the overtime requirements because of their sales activities.

In 1987, the DOL affirmed that service advisors are exempt from overtime when it amended its Field Operations Handbook and stated that regulations would be revised to reflect its new position. In 2008, DOL issued a notice of proposed rulemaking that it would soon revise its regulations to exempt service advisors from the overtime rules.

However, in 2011, the DOL, with little explanation, changed course again and announced that it would not proceed with the proposed rule, but instead issued a final rule that qualified service advisors for overtime.

Based on the 2011 DOL regulations, service advisors at a Mercedes-Benz auto dealership sued for overtime pay. The question before the U.S. Supreme Court was whether the final 2011 regulations of the U.S. DOL deserved any deference.

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In its analysis, the Court said that the regulations of a federal agency interpreting a statute receive deference if (a) the statute is ambiguous, and (b) the agency's interpretation is reasonable. In testing the legitimacy of a federal regulation, the Court looks to *Chevron, Inc. v National Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under *Chevron*, if Congress grants an agency the authority to administer a statute by issuing regulations, those regulations will have the force of law as long as the public was given adequate notice and reasons for the regulations, based on applicable facts, and an opportunity to comment.

While an agency is permitted to change a longstanding position, it may not do so without a reasoned explanation for the change. If a federal agency does not articulate satisfactory reasons for its regulations, including a rational connection between the facts found and the choices made, the regulations are deemed arbitrary and capricious and cannot carry the force of law.

The Court concluded that the DOL's new rule, promulgated with little explanation and no analysis, requiring car dealerships to pay service advisors for overtime after a decades-long exemption, could not be given deference. The Supreme Court, concluding that the Ninth Circuit improperly followed the 2011 DOL regulation, vacated the Ninth Circuit decision and instructed the Appeals Court to decide the case without regard to the DOL regulations.

The upshot of the decision is that while regulations can add details that a statute lacks, they will not have the force of law if they are issued without a reasoned explanation. Regulations that reverse a longstanding prior position are given particular scrutiny in meeting this requirement.

This recent U.S. Supreme Court case justifies auto dealerships' continued treatment of service advisors as sales personnel who are exempt from overtime pay.

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